IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1336 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SABBIR HUSEN @ BABLO HAYATBHAINAGORI

Versus

DISTRICT MAGISTRATE

Appearance:

MR KR JANI for Petitioner

Mr. HL Jani, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2001

ORAL JUDGEMENT

Heard learned advocate Mr. S.R. Patel for Mr. K.R. Jani for the petitioner and learned AGP Mr. HL Jani for the respondent State. In this petition under Article 226 of the Constitution of India, the petitioner

has challenged the impugned order of detention dated 2nd November, 2000, passed by the District Magistrate, Mehsana. The petitioner has been detained in the Central Jail, Vadodara as Class-II detenu. The grounds of detention were communicated to the petitioner as per section 9(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The impugned order of detention has been passed by the detaining authority under section 3(1) of the PASA Act. The detaining authority has withheld the identity of the witnesses whose statements were recorded by claiming privilege under section 9(2) of the PASA Act. Rule has been issued in this petition on 26.2.2001 and the petition was filed on 22.2.2001.

Learned advocate Mr. S.R. Patel has challenged the impugned order of detention and has pointed out that as per the grounds of detention, the petitioner has been involved in the offences registered at CR NO 151 of 1999 dated 4th March, 2000; CR NO 51 of 2000 dated 22nd January, 2000 and CR NO 529 of 2000 dated 1.9.2000. All the offences are relating to the provisions of the Bombay Prohibition Act and are pending before the concerned Court. In light of these facts, learned advocate Mr. Patel has submitted that the last offence registered against the petitioner is dated 1.9.2000 and the impugned order of detention has been passed on 2.11.2000 and, therefore, there was delay of about more than two months in passing the impugned order of detention against the petitioner. Mr. Patel has raised another contention that three statements of the secret witnesses have been recorded by the concerned police authority on 11th September, 2000 and said three statements were verified by the Detaining Authority on 19th September, 2000 and, thereafter, on 2nd November, 2000, impugned order of detention has been passed and, therefore, there was delay of about more than one and half months which has remained unexplained because the respondent State has not filed any reply and has not explained the delay. He has also submitted that from 1st September, 2000 till the date of the impugned order of detention, in between, there was no incident or offence is alleged to have been committed by the petitioner and, therefore, such delay which has not been explained by the State has vitiated the detention and, therefore, the impugned order of detention is required to be quashed and set aside. He has relied upon the decision of this Court in case of Elesh Nandubhai Patel versus Commissioner of Police, Ahmedabad City and others reported in 1997 (1) GLH 381.

Learned AGP Mr. Jani, while supporting the

impugned order of detention, has submitted that looking to the grounds of detention and the statements of the secret witnesses, the petitioner has been considered to be dangerous person and, therefore, the detaining authority was having no option but to detain the petitioner under the PASA Act.

I have considered the submissions made by both the learned advocates. I have considered the undisputed facts on record and also considered the relevant observations made by this Court in the decision reported in 1997 (1) GLH 381. In para 21 of the said decision, this court has observed as under:

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of five months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to bultress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

I have considered the observations made by this Court in case of Elesh Patel (supra). Considering the facts of the present case, the last offence has been registered against the petitioner on 1st September, 2000 and the order of detention has been passed on 2nd November, 2000 and during the interregnum period, no offence has been registered against the petitioner from 1st September, 2000 to 2nd November, 2000 and, therefore, there was a gap of two months which has been remained unexplained and unanswered by the detaining authority.

Therefore, following the ratio laid down by this Court in case of Elesh N. Patel (supra), keeping in view the observations made in para 21 of the said decision, in the facts and circumstances of the case, the impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 2.11.2000 is vitiated and resulted to quash and set aside. The detenu Sabbir Husen @ Bablo Hayatbhai Nagori who has been detained at the Central Jail, Vadodara be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

13.6.2001. (H.K. Rathod,J.)

Vyas